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2011 DEC 23 AM 10:41

BY: K GRESHAM

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

CAUSE NO. P1300CR201001325

STATE'S MOTION TO ADMIT
DEFENDANT'S JULY 21, 2009
INTERVIEW

Assigned to Hon. Gary Donahoe

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney and her deputy undersigned, moves the Court for an order admitting Defendant's interview on July 21, 2009 pertaining to the voice in the vent and anonymous email.

On July 7, 2009 John Sears ("Sears") requested an interview with the County Attorney to disclose information proving Steven DeMocker ("Defendant") was innocent of murdering Carol Kennedy. A copy of the unsigned letter is attached as exhibit "1".

On July 21, 2001, the Defendant was brought to the Yavapai County Attorney's Office for a recorded interview. Present was Sears, defense investigator Richard Robertson ("Robertson"), Deputy Attorney Joe Butner, Investigators Randy Schmidt ("Schmidt") and Jimmy Jarrell. The Defendant agreed to talk only about the voice in the vent and the emails. The Yavapai County Attorney's office made no promises or agreements.

1 The recorded and transcribed interview lasted 1.5 hours. Attached as exhibit "2" are the
2 first 3 pages of the transcript. At the bottom of page 2, Mr. Sears says:

3 "I think we've all agreed and I had a conversation with, Joe and Sheila and
4 Dennis... several weeks ago about this...we agree that Steve will waive any
5 claim of attorney/client privilege here today to talk about these particular matters
6 but that everyone agrees on both sides that doesn't constitute some larger waiver
7 of the privilege generally and ...I think... your office is onboard with that, right
8 Joe."

9 In the interview, Sears admits to receiving the subject emails on his blackberry after a
10 Friday visitation with the Defendant. Transcript, lines 12-23 pg 39.

11 Robertson asked the Defendant if he had anything to do with "concocting" the voice in the
12 vent or the email. Defendant said "I have had nothing to do with the generation of these tips or
13 this email or anything like that." Transcript, lines 9-18 pg 77.

14 On July 30, 2009 Schmidt gave Sears a 37 photo array to assist Defendant in identifying
15 the voice in the vent. Sears insisted on showing the array so Schmidt would not be seen in jail
16 with the Defendant. On August 4, 2009 Sears returned the array to Schmidt. Sears wrote notes
17 next to many of the photographs which purportedly came from the Defendant. According to
18 Sears, the Defendant identified 13 possible inmates who could be the mysterious voice in the
19 vent. See exhibit 3 -Examples of photos with notes attached.

20 Through out the lengthy interview, Sears assisted with questions and volunteered
21 statements to the investigators clarifying issues. No reasonable person could read the interview
22 transcript without concluding Defendant's waiver of the client privilege was voluntary. Waiver of
23 attorney/client privilege is contemplated by the ethical rules.

24 ER 1.6(d) (4) of the Rules of Profession Conduct state:

25 "(d) A lawyer may reveal such information relating to the representation of a client to the
26 extent the lawyer reasonable believes necessary:

(4) ... to establish a defense to a criminal charge..."

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1 The ethical rules allow an attorney to divulge confidential communications when the
2 lawyer reveals communications to establish a defense to criminal charges. Mr. Sears' purpose for
3 requesting an interview with the County Attorney was to establish a defense to the murder charge.
4 The ethical rules contemplated this scenario, thus protecting Sears from any ethical violation
under Rule 1.6.

5 The State has requested to depose Sears in a separate motion alleging him to be a material
6 witness for foundation reasons. The July 21, 2009 interview is a specific example where Sears
7 waived the attorney client privilege under ER 1.6(d) (4).

8 In the interview the Defendant denies authoring the voice in the vent and email stories.
9 This evidence is necessary to prove elements for the offenses of first degree murder, forgeries and
10 fraud scheme upon the court. The State moves this court for an order admitting the July 21, 2009
interview into evidence.

11
12 **RESPECTFULLY SUBMITTED** this 23rd day of December, 2011.

13 **Sheila Sullivan Polk**
14 **YAVAPAI COUNTY ATTORNEY**

15
16 By: 

17 **Jeffrey Paupore**
Deputy County Attorney

18 **COPY** of the foregoing **Emailed** this
19 23rd day of December 2011, to:

20 Honorable Gary Donahoe
21 Division 1
Yavapai County Superior Court
Via email to Cheryl Wagster: C.Wagster@courts.az.gov

22 Craig Williams
23 Attorney for Defendant
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25 Via email to craigwilliamslaw@gmail.com
26

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16
17 By: 
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July 7, 2009

Joe Butner
Yavapai Deputy County Attorney
Camp Verde, AZ

Hand delivered

Re: State of Arizona v. Steven Carroll DeMocker

Dear Joe:

This letter is intended to memorialize the agreements we have reached regarding the disclosure by us to you of certain matters that we have now discussed in general terms. I ask that you sign below before I complete my discussions with you, so that we have an understanding of how this information will be treated.

First, we agree that this matter will be kept confidential and not shared in any way with persons outside the prosecution and defense teams in this case, until both sides agree that it may be made public.

Second, to the extent that disclosure of attorney-client privileged matters may be made, we agree that Mr. DeMocker will not have waived the privilege as to any other matters beyond the scope of the disclosures made pursuant to this agreement and that the State will not later claim any broader waiver as a result.

Third, we agree that the defense will cooperate in any investigation to the greatest extent possible, and that the State will not therefore make any attempt to unilaterally obtain further information regarding this disclosure from the defense through search warrants, wiretaps or any other similar means.

Finally, in consideration of the defendant's safety and the sensitive nature of the information to be provided, we agree that all reasonable efforts will be made to protect him while he remains in custody, and that he will not be placed in any sort of administrative segregation or protective custody as a result of this process.

John M. Sears

Joseph C. Butner

7/7/09 MFG w/ John Sears, SSP, Dmm + Joe Butner.
We did not agree to sign this.

1 State of Arizona v. Steven DeMocker, CR-2010-01325

2 Interview with Steven DeMocker

3 Interviewed by Randy Schmidt

4 Date: July, 21, 2009

5
6 Present: Detective Randy Schmidt
7 Detective Jimmy Jarrell
8 Joe Butner
9 Richard Robertson
10 John Sears
11 Steven DeMocker

12 SCHMIDT: Okay. And it is just about 10:00
13 o'clock on the 21st of July 2009. Here at the County
14 Attorney's Office in the Hastings Room. Uh, I'm Randy
15 Schmidt with the County Attorney's Office, Investigator.
16 We also have Joe Butner; we also have Richard Robertson,
17 uh, with the Defense team, Mr. DeMocker and John Sears
18 here. And we're, the purpose of this at least as I
19 understand it is to go over two things, one is, uhm,
20 primarily go over some notes that, that you've made in
21 reference to a conversation that you were party to of
22 for, uh, for whatever and, and, and I apologize first of
23 all that I don't know how good my copy is I can't read a
24 lot of this and I understand that this, you were

1 scribbling this with your three inch pencil or two inch
2 pencil or whatever it is.

3 DEMOCKER: A dull, a dull stubby pencil --

4 SCHMIDT: Okay. Uh, --

5 DEMOCKER: -- Ballanced on a toilet.

6 SCHMIDT: Okay. Uh, what I'd like to do first
7 is just give me, uh, if you could give me a brief
8 overview of how you come about this, you know, the
9 conversation. Go into some --

10 SEARS: Randy, can we, can we just put a
11 couple of things on this tape --

12 SCHMIDT: Yeah.

13 SEARS: -- that I think we've all agreed
14 about just so that we start upfront --

15 SCHMIDT: Okay.

16 SEARS: -- about the scope of this that,
17 that you're right we're going to talk about, about this,
18 this conversation inside the jail and then I presume
19 we're going, we're going to talk about some e-mails that
20 were sent to me, --

21 SCHMIDT: Correct.

22 SEARS: -- uh, that, that relate to the same
23 subject matter. I think we've all agreed and I had a

24

1 conversation with, uh, Joe and, uh, Sheila and Dennis,
2 uhm, uh, several weeks ago about this that, that, uh, we
3 agree that Steve will waive any claim of attorney/client
4 privilege here today to talk about these particular
5 matters but that everyone agrees, uh, on both sides that
6 that doesn't constitute some larger waiver of the
7 privilege generally and, and I don't, I, I, I think
8 that, uhm, your office is onboard with that... is that
9 right, Joe?

10 BUTNER: That is correct.

11 SEARS: Okay. And then, uh, and the other
12 thing is that, uhm, given the unusual circumstances of,
13 of, uh, a law enforcement interview of the defendant in
14 a Capital case, uh, pretrial, uh, if, if there comes a
15 time when Steve wants to either take a break or confer
16 with, uh, with Rich and me if we could honor that
17 request. I don't know that that's going to happen but
18 if we could agree now that, that might happen at some
19 point could find a way to do that.

20 BUTNER: That's agreeable.

21 SEARS: Okay. Thank you. I think that's
22 really all I want --

23 SCHMIDT: Okay.

24

Name: KALEB WILLIAM [REDACTED]



Sex: M

DOB: [REDACTED]

Height: 600

Weight: 170

Race: WHITE

Hair Color: BRO

Hair Length: Short

Eye Color: BLU

Complexion: FAR

in N2,
90% smd
not him -
back in N

Name: RUBEN A [REDACTED]



Sex: M
DOB: [REDACTED]
Height: 510
Weight: 185
Race: WHITE
Hair Color: BLK
Hair Length: Long
Eye Color: BRO
Complexion: LBR

*a possibility —
was upstairs?
Never talked
to him, wouldn't
know his voice*

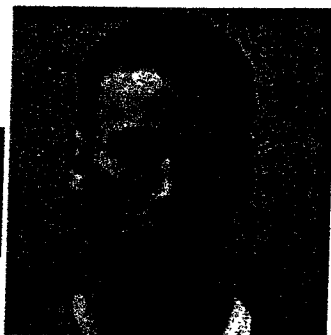
Name: CODY ALLEN [REDACTED]



Sex: M
DOB: [REDACTED]
Height: 511
Weight: 175
Race: WHITE
Hair Color: BLN
Hair Length: Short
Eye Color: BLU
Complexion: FAR

Possibility,
was finally w/
SCD, one of the
ones he has thought
about - there
for a long time

Name: GABRIEL TIMOTHY [REDACTED]



Sex: M
DOB: [REDACTED]
Height: 601
Weight: 160
Race: WHITE
Hair Color: BRO
Hair Length: Short
Eye Color: BLU
Complexion: UNK

Poss. - always
wanted to be
a friend
upstairs in
middle -
could be.